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May 8, 2008

The Honorable Joseph J. Farnan, Jr.
United States District Court
844 N. King Street
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: *Sepracor Inc. v. Dey, L.P. and Dey, Inc.*
Civil Action No. 06-113-JJF (consolidated)

Dear Judge Farnan:

This firm, along with the law firm of Frommer Lawrence & Haug LLP, represents Dey, L.P. and Dey, Inc. in the above captioned ANDA litigation. We write at Your Honor's direction to request that the Court set a date for a Markman hearing in the above action.

As Your Honor may recall, the parties were before the Court on March 7, 2008 to address Sepracor's motion to consolidate the Dey case (C.A. No. 06-113) with the Barr case (C.A. No. 07-438). At that time, Your Honor decided that the dates for a Markman hearing in the above action would be "driven by the *[Sepracor v. Breath* case being heard in the District of Massachusetts] and whether or not that goes forward to trial in the summer" (D.I. 259; 3/7/08 transcript at 22), and Your Honor directed the parties to write chambers to request a Markman hearing date once Markman briefing in this action was completed:

Once [Markman] briefing is completed, you'll call and write chambers for a Markman date.

At that point I'll decide when the Markman hearing is going to be. And as I have said, that's going to be driven largely by what's going on in Massachusetts. If Massachusetts is still heading toward trial, your Markman date will be further out. If Massachusetts has settled out, then I'll move the Markman date nearer to the Markman briefing.

All of you should be ready to go to trial on ninety days notice from the Markman decision. And again, that date will largely be driven by the Massachusetts status. (D.I. 259; 3/7/08 transcript at 23)

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On May 1, 2008, counsel for Sepracor notified the Court that the *Sepracor v. Breath* in the District of Massachusetts had settled (D.I. 278), and Markman briefing in the consolidated cases in this district was completed that same day. Accordingly, Dey respectfully requests that the Court schedule a Markman hearing in this matter at Your Honor's earliest convenience.

Respectfully,

/s/ John G. Day

John G. Day

JGD/nml

cc: Jack B. Blumenfeld, Esquire (via electronic mail)
Elizabeth A. Leff, Esquire (via electronic mail)
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